

REMARKS

The present application contains claims 26-40. Claims 1-26 and 28-34, according to the Examiner, have been withdrawn from consideration as being directed to a nonelected invention, claims 27 and 35-38 having been examined on the merits.

Claims 1-25 have been cancelled with prejudice, Applicant reserving the right to file a divisional application directed to the subject matter of claims 1-25.

Claims 26, 27, 28, 35, 36, 37, and 38 have been amended.

Claims 39 and 40 have been newly added.

The acknowledgement of Applicant's election of species without traverse is noted. The Examiner states that Applicant contends that claims 26-38 are readable on the elected specie. The Examiner states that claim 26 recites a shelf surface which is aligned transverse to a longitudinal axis of the device which is not shown in the elected embodiment and claims 28-34 recite a D-shaped perimeter which is also not present in the elected embodiment and accordingly, the Examiner has examined claims 27 and 35-38 which the Examiner considers to be readable on the elected species.

Applicant takes exception to the Examiner's position. Turning to a consideration of the elected specie of Fig. 28, which Applicant states should contain Figs. 28 through 30, it should be noted that there is a shelf 810b shown in Fig. 28 which is aligned transverse to the longitudinal axis. Note the longitudinal axis shown by the center line CL of Fig. 29A, for example. Making reference to the dictionary definition, it should be noted that the term "transverse" means "lying in a crosswise direction; opposed to longitudinal" which definitions have been taken from Webster's Third International Dictionary, Unabridged, Copyright 1981, page 2431.

For this reason, it is submitted that claim 26 is readable on the elected specie.

The Examiner further states that claim 28-34 which recite a D-shaped perimeter is also not present in the elected embodiment. To the contrary, considering a cross-section taken through the elected embodiment of Fig. 28, the substantially linear side of the "D" is the surface 810a while the curved or semi-circular portion of the "D" is the surface that curves around from opposing edges of the surface 810a. Applicant has provided, as part of Appendix "A", accompanying this amendment, a sketch A-1 showing the D-shaped perimeter which is a cross-section taken from the elected specie of Fig. 28, also forming part of the Appendix, the D-shaped cross-section being taken along the line A-1 - A-1 in the reproduced Figure 29, identified as Sketch A-2 in the Appendix "A". For these reasons, it is submitted that claims 28-34 do read

upon the elected specie and should be examined together with claims 27 and 35-38 and reconsideration and examination of claims 26 and 28-34 as being directed to the elected specie is respectfully requested.

The objection to the specification is noted. The amendment proposed by the Examiner to Page 41, line 17, has been adopted by Applicant, and for this reason, it is submitted that this objection should be withdrawn.

Claims 27 and 35-38 have been rejected as failing to comply with 35 U.S.C. §1.12, second paragraph. This rejection is respectfully traversed. These claims have been extensively amended to cure the informalities referred to by the Examiner and for this reason it is submitted that this rejection should be withdrawn.

Claims 27, 35, and 36 have been rejected under 35 U.S.C. §102(b) as anticipated by Jahn. This rejection is respectfully traversed.

The Examiner states that Jahn discloses a pen comprised of a barrel portion 1, an operation portion A and a gripping portion between the operating portion and the barrel portion which is shaped as claimed and, with regard to claims 36, the operating portion is a writing point (pen P) which includes a tubular supply member e being aligned such that its longitudinal axis is displaced from the central axis of the barrel portion.

Jahn, although teaching a finger gripping portion t shown in Figs. 1 and 2 which is similar to the finger gripping portion identified as 810, 810a and 810b shown in Fig. 28 of the present application and substantially terminating in a curved-edge similar to the curved-edge 810c of Fig. 28 of the present application, nevertheless **lacks** a teaching of the hour-glass shaped side surface portion identified as 812a shown in Fig. 28. In addition, the pen A is of an old type which is clearly intended to be dipped into an inkwell and has **no** supply tube, the only supply of ink being stored within the narrow slitted portion held therein by capillary action. It should be noted that, contrary to the Examiner's statement, "c" is **not** a tubular supply member, but is described as an "end face" (see page 1, right-hand column, line 90). Confirming this, Jahn described the pen holder as being provided with a "conventional clamping device c", which is described as being of "any known construction". To the contrary, the present invention provides a supply tube which extends from the barrel portion through the gripping device to the writing point end, as is clear, for example, from a consideration of Fig. 29A of the present application.

Jahn provides a pen holder P which extends from a narrow right-hand end, (the broken end in Figs. 1 and 2) and **increases** in diameter, becoming substantially a maximum diameter in the mid-range of the surface t and thereafter tapering to a smaller diameter at the left-hand end where the pen A is attached and extends away from the body of holder P.

To the contrary, the present invention has a substantially hour-glass shape in the mid-portion of the gripping device which is substantially designated by the designating number 812a in Fig. 29A of the present invention which is clearly contrary to the design of Jahn whereby a force exerted by a portion of a finger in the region of the designating numeral 812a as well as any portion of a finger resting upon the finger shelf 810b both provide a vector having a downward applying force component without the need for exerting a signification squeezing action of the fingers against the pen, whereas the enlarged diameter portion of the pen P of Jahn clearly yields a contrary result and is clearly lacking in the provision of an hour-glass configuration.

It should further be noted that Jahn utilizes three (3) indentations for equal finger placement and does **not** employ a full finger support shelf nor is Jahn concerned with balance since the pen point is offset at an oblique angle. Finger positions of the Jahn penholder are not interchangeable with relation to the pen point, and altering finger arrangement would reorient the writing point, rendering the pen unusable and further the external ink supply would not be retained in other than the "correct" orientation and either be in a sideways ink runoff or an upside-down ink run upward orientation into the user position which would render the pen not only impractical, but also unusable.

The off-center alignment of the supply tube accomplishes a number of things which clearly are not even contemplated by Jahn, namely the following:

The offset of the supply tube and writing tip works in conjunction with shelf 810 to balance the pen. The pen will balance upright using any one finger (and **only** one finger) placed on shelf 810c with pressure lightly applied in a downward manner. The off-center arrangement allows for the interior indentation of 810a of the finger shelf portion without enlarging the pen width that would otherwise be needed to accommodate a centrally located supply tube as well as an operating spring mechanism (not shown) normally employed in such devices.

All of the independent claims 26-28 and 35, in addition to positively reciting the finger receiving force applying shelf, further recite the annular-shaped portion gradually reducing in diameter from the first end toward an intermediate portion between the first and second ends and which gradually increases in diameter from the intermediate portion toward said second end, as is clearly shown, for example, in Fig. 28 wherein said annular-shaped portion reduces from end 812b toward intermediate portion 812a and thereafter increases in diameter toward the second end 812c, which is clearly neither taught nor remotely suggested by Jahn. All of the dependent claims 29 through 34 and 36-38 likewise recite these limitations since they depend from at least one of the aforesaid independent claims.

Claim 36 recites an elongated tubular-shaped supply member arranged in the operating instrument and comprising a writing point having its longitudinal axis displaced from a central longitudinal axis. This is neither taught nor remotely suggested by Jahn, which **fails** to teach **any** supply member. New claim 39 recites the writing instrument having a supply tube extending through the barrel portion and gripping device and terminating in a writing point. This arrangement is neither taught nor remotely suggested by Jahn. New claim 40 recites that the supply tube is parallel to and displaced from a central axis of said instrument which is neither taught nor remotely suggested by Jahn.

In view of the foregoing, it is submitted that claims 26 through 36 patentably distinguish over the cited art of record (Jahn), and reconsideration and allowance of these claims are earnestly solicited. Claims 37 and 38 have been rewritten in independent form to include all the limitations of their base claim and any intervening claims and it is now submitted that these claims are allowable. New claims 39 and 40 which depend from claim 36 are also deemed to be allowable. It is submitted, for the reasons set forth hereinabove, that claims 26 and 28-34 read on the elected specie and should properly be examined in the present application and for the reasons set forth hereinabove these claims are deemed to patentably distinguish over Jahn and it is submitted that these claims are likewise allowable.

Applicant reserves the right to file separate applications directed to the subject matter of the nonelected claims.

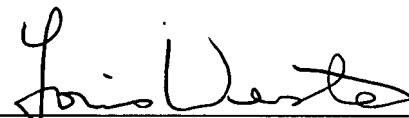
Examination on the merits, reconsideration and allowance of the claims remaining in the application are earnestly solicited.

If, however, the Examiner is of the opinion that such favorable action cannot now be taken, it is requested that he telephone Applicant's undersigned attorney in order that any outstanding issue may be resolved without the necessity of a further Office Action.

If there are any additional fees due in connection with this response or any credits due, the Examiner is authorized to either charge or credit our Deposit Account No. 23-0815.

Respectfully submitted,

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